

THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of	
Inventors: Takaaki SHIMADA et al.	: Confirmation No. 8968
U.S. Patent Application No. 10/764,589	: Group Art Unit: 3761
Filed: January 27, 2004	: Examiner: Melanie Jo Hand
For: PANTS-TYPE DISPOSABLE WEARING ARTICLE	

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Attn: Board of Patent Appeals and Interferences

**REPLY BRIEF**

Further to the Examiner's Answer mailed on December 10, 2008, in connection with the above-identified application on appeal, herewith is Appellants' Reply Brief.

To the extent necessary, Appellants hereby request any required extension of time under 37 C.F.R. §1.136 and hereby authorizes the Commissioner to charge any required fees not otherwise provided for to Deposit Account No. 07-1337.

## ARGUMENT

The rejection of claims 4-6, 11-16 and 18-22 as obvious under 35 U.S.C. 103(a) over one or more of Okuda (JP 2001 157690), Hall et al. (US 2004/0006323), and Posniak et al. (US 6,045,543) is hereby traversed for the previously-presented reasons advanced in Appellants' Appeal Brief. Appellants hereby respond to selected portions of the Examiner's Answer (EA) mailed December 10, 2008.

**A. Claims 4-6 and 22 are patentable over Okuda in view of Hall, or further in view of Posniak**

Independent claim 4 recites, *inter alia*, a pants-type disposable wearing article, comprising a "base sheet having, in said front and rear waist regions, a waist-surrounding end zone extending in a transverse direction of said article, a pair of waist lateral zones extending in the longitudinal direction and, in said crotch region, a pair of crotch lateral zones extending in leg-surrounding directions." Claim 4 further recites "a plurality of leg-surrounding elastic members extending along said crotch lateral zones in the leg-surrounding directions, respectively, and being contractible in said leg-surrounding directions." (Emphasis added).

On page 16 of the EA, the Examiner asserts that members 21 disclosed by Okuda "are clearly leg surrounding elastic members as the term is understood by applicant's disclosure and are structurally substantially identical to those disclosed by applicant with respect to position of the article." Appellants respectfully disagree.

Fig. 2 and Applicants' specification at page 14, lines 1-21, clearly discloses wherein "leg-surrounding elastic members 23 are contractible along the crotch lateral zones in the leg-surrounding direction. The leg-surrounding elastic members 23 comprise leg-surrounding first elastic members 23 extending from the front waist region 6 toward the crotch region 7, generally describing a U-curve relative to the longitudinal direction and leg-surrounding second elastic members 23 extending from the rear waist region 8 toward the crotch region 7, generally describing a U-curve

relative to the longitudinal direction." (Emphasis added). Notwithstanding the assertions in the EA, Okuda fails to disclose, teach, or suggest the claimed leg-surrounding elastic members.

Appellants respectfully submit that Okuda, in paragraph [0012], specifically states that elastic materials 21 are waistline elastic materials, wherein to prevent any leakage through the waistline, "the inside edge of the waistline elastic materials 21 in the width direction positioned closest to the center D of the longitudinal undercrotch of the diaper is preferably apart from the undercrotch center D by 20% or more of the total length of the diaper." In other words, waistline elastic materials 21 are specifically designed to prevent leakage through the waist by maintaining a minimum distance L from the undercrotch center, and therefore are designed not to extend towards the crotch lateral area, as recited in claim 4, to as to surrounding the leg.

Still further, Okuda, in paragraph [0004] and Fig. 1, only discloses wherein waistline elastic materials 21 are disposed on the dorsal portion A, i.e., the rear of the assembled diaper and fails to disclose, teach, or suggest waistline elastic material 21 disposed on a ventral portion B, i.e., the front of the diaper. Unlike Okuda, Appellants' claim 1 recites a base sheet having, "in said front and rear waist regions ... a plurality of leg-surrounding elastic members extending along said crotch lateral zones in the leg-surrounding directions, respectively, and being contractible in said leg-surrounding directions."

Appellants further submit that Hall fails to remedy the deficiencies of Okuda in regards to the leg-surrounding elastic members. Indeed, on page 16, line 10, the EA states that "...Hall does not need to disclose such elastic members."

Applicants respectfully submit, therefore, that the independent claim 4 is patentable at least due to the failure of Okuda in view of Hall, to disclose, teach or motivate all recited features of the claims.

Withdrawal of the rejection of claim 4 is believed appropriate and therefore respectfully requested.

Claims 5-6 and 22 depend variously from independent claim 4 and are likewise patentable over the asserted combination of references art for at least their dependence on an allowable base claim, as well as for the additional features they recite. Accordingly, reversal of this rejection is respectfully requested.

**B. Claims 11-12 and 18-21 are patentable over Okuda in view of Hall, or further in view of Posniak**

Independent claims 11 and 18 are similar to claim 4 and are patentable at least based upon the argument presented above in regards to claim 4, and incorporated herein.

Claims 12 and 19-21 depend variously from independent claims 11 and 18 and are likewise patentable over the asserted combination of references art for at least their dependence on an allowable base claim, as well as for the additional features they recite. Accordingly, reversal of this rejection is respectfully requested.

C. Claims 13-16 are patentable over Okuda in view of Hall

Independent claim 13 is similar to claim 4 in that claim 13 recites "a plurality of third elastic members extending along peripheral edges of said leg-holes."

As regarding claim 4 addressed *supra*, Okuda fails to disclose, teach, or suggest this feature. Okuda appears to only disclose waistline elastic material 21 in the dorsal portion A of the diaper and elastic material 61 in a longitudinal direction of the diaper. As seen in Fig. 1, peripheral edges of ventral portions of the leg-holes are free from elastic material.

For at least this reason, independent claim 13 is patentable over the asserted combination of references.

Claims 14-16 depend variously from independent claim 13 and are likewise patentable over the asserted combination of references at least for at least their dependence on an allowable base claim, as well as for the additional features they recite. Accordingly, reversal of this rejection is respectfully requested.

**CONCLUSION**

For the extensive reasons advanced above and in Appellants' Appeal Brief, reversal of the rejection is in order.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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